

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

JUN 16 2011

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	
)	
PETITIONER,)	CONSENT ORDER
)	
VS.)	
)	
BANKERS LIFE AND CASUALTY)	CAUSE NO. C-1889
COMPANY,)	
)	
RESPONDENT.)	

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its representative, Martin W. Swanson and Bankers Life and Casualty Company, ("Respondent"), mutually stipulate and agree as follows:

JURISDICTION

1. The Department has jurisdiction over the subject matter and Respondent pursuant to Neb. Rev. Stat. §44-101.01, §44-303 and §44-1539 et seq., and Title 210 NAC Ch. 61.

2. Respondent is an Illinois domiciled insurer holding a certificate of authority to engage in the business of insurance in the State of Nebraska.

STIPULATIONS OF FACT

1. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. Bankers Life and Casualty Company, Cause Number C-1889 on April 27, 2011. A copy of the petition was served upon the Respondent by

serving a copy upon Respondent's agent for service registered with the Department by certified mail, return receipt requested.

2. The petition alleges that Respondent violated Neb. Rev. Stat. §§ 44-1539, 44-1540(2), 44-1540(4), 44-1540(7), and 44-1540(8), in addition to Title 210 NAC Ch. 61 §§ 008.01, 008.02, 008.03, 008.04 and 008.08 as a result of the following conduct:

- a. On August 3, 2010, a complaint was filed with the Department alleging difficulty with the processing of claims filed by both a husband and wife. Complainant stated that he had received a letter from Respondent indicating that he was deceased. Complainant was not deceased. Additionally, Complainant indicated that his wife had been receiving services beginning in 2009.
- b. On August 4, 2010, Carol McDermitt (McDermitt), an insurance investigator with the Department's Consumer Affairs Division (CAD), initiated an investigation regarding the complaint and sent a letter to Respondent.
- c. On August 26, 2010, Respondent responded. In the letter, Respondent indicated that on March 15, 2010, it received claim forms along with bills, daily care notes and the private caregivers' certifications for services provided to Complainant and his wife. On April 9, 2010, Respondent contacted Complainant's daughter about a request for an on-site assessment, and also talked to Complainant on April 19, 2010. The assessment vendor notified Respondent on April 29, 2010, that they could not make contact with Complainant and his wife. In the meantime, the daughter of Complainant said she was trying to contact the assessment vendor. The assessment was eventually completed on May 21, 2010.
- d. On April 29, 2010, the daughter was contacted and was told that Complainant did not qualify for benefits under the policy because he was not receiving assistance with two activities of daily living; however, the nurse aides did qualify as eligible providers under the policy. On April 29, 2010, the daughter contacted Respondent about "overlooking" Complainant's wife's home health care. Respondent asked that the claim be resubmitted, which was done on June 9, 2010. On June 30, 2010, Respondent determined that Complainant did not qualify for benefits.
- e. On July 6, 2010, Complainant's wife's care was approved by Respondent. On August 13, 2010, Respondent paid \$6,176.50 for Complainant's wife, including interest due to the delay in servicing the claim. Respondent

received notification of the death of Complainant's wife on June 10, 2010. Respondent's previous denotation that Complainant had died was incorrect.

- f. On or about September 1, 2010, McDermitt sent a letter to Respondent based upon her investigation of documents provided to the Department by Respondent. McDermitt noted that an Explanation of Benefits ("EOB") statement to Complainant and his wife stated "Your HOME HEALTH CARE insurance does not pay for losses due to Home Health Care services and supplies not included in your Home Health Care Plan. The Exception Clause explains this." McDermitt asked Respondent to highlight the policy provision entitled "Exception Clause." McDermitt further questioned Respondent's EOB and the "dividing" of billing for both Complainant and his wife, and asked for an explanation of this claim(s) procedure. McDermitt also noted that Respondent seemingly created the "dividing" process in between June 30, 2010 and August 13, 2010, and further questioned how the EOB was compliant with Nebraska law because of the formatting of said EOB.
- g. The September 1, 2010 letter from McDermitt to Respondent also questioned why certain provider billings were either not paid or denied and, if delayed, where the reasonable written explanation was within the documentation previously submitted to the Department. Specifically, the billings submitted to Respondent from October 4, 2009 to December 11, 2009 were questioned by McDermitt. McDermitt also asked why there was not documentation submitted by Respondent confirming that Respondent informed Complainant and his wife that they could appeal and send a complaint to the Department. McDermitt also asked how Respondent calculated the interest owed on the claims.
- h. On September 27, 2010, Respondent sent a response to the Department. In the response, Respondent admitted they "inadvertently overlooked" the claim for benefits for Complainant's wife on or about June 30, 2010.
- i. McDermitt reviewed the Respondent's response and determined that they had not answered several of her questions. On September 30, 2010, McDermitt sent another letter restating several of the questions that were not answered from her September 1, 2010 letter.
- j. On November 16, 2010, Respondent responded to McDermitt's September 20, 2010 letter. Respondent admitted that the policy did not have an "Exception Clause" as earlier claimed. Respondent further admitted that claims for Complainant and his wife were "inadvertently overlooked". Because the claims were "inadvertently overlooked", a written explanation of the delay in servicing was not sent, nor was the follow up sent every thirty days. Respondent further admitted that they did not affirm or deny liability on the claims within a reasonable time and thus were not in compliance with Nebraska law.

- k. Respondent further admitted in the November 16, 2010 letter that they were “developing system requirements to revise our Explanation of Benefits (EOB’s) report. The new criteria addresses Nebraska’s EOB requirement under Title 210, Nebraska Administrative code (sic), Chapter 61 (008.04) and is targeted to be implemented in Quarter 1, 2011.”
- l. Respondent further conceded in the November 16, 2010 letter that they “...should have included that the billing was divided equally between the [Complainant and his wife]. This was in error. Because the bills were divided in half, the billed amount shown on the Record of benefits was 50% of what was actually billed.”
- m. Respondent admitted that the Complainant’s daughter requested an appeal on May 4, 2010 for Complainant’s claim. Respondent further admitted that once the appeal was completed they should have notified Complainant and his wife in writing that they could have had the matter reviewed by the Department and thus, were not in compliance with Nebraska Administrative Code, Chapter 61 (008.08).
- n. Respondent further admitted in the November 16, 2010 letter that they inadvertently applied Nevada law for purposes of prompt payment law.

3. Respondent was informed of the right to a public hearing. Respondent waives that right, and enters into this Consent Order freely and voluntarily. Respondent understands and acknowledges that by waiving its right to a public hearing, Respondent also waives its right to confrontation of witnesses, production of evidence, and judicial review.

4. Respondent does not admit or deny that it violated Neb. Rev. Stat. §§ 44-1539, 44-1540(2), 44-1540(4), 44-1540(7), and 44-1540(8), in addition to Title 210 NAC Ch. 61 §§ 008.01, 008.02, 008.03, 008.04 and 008.08 but in order to settle this matter, Respondent agrees to abide by the terms set forth in the consent order.

CONCLUSIONS OF LAW

State of IL)
) ss.
County of Cook)

On this 14 day of June, 2011, Jim Valdez, personally
appeared before me, on behalf of Bankers Life and Casualty Company, and read this Consent
Order, executed the same and acknowledged the same to be his voluntary act and deed.



Autumn M. Faris
Notary Public

CERTIFICATE OF ADOPTION

I hereby certify that the foregoing Consent Order is adopted as the Final Order of the Nebraska Department of Insurance in the matter of State of Nebraska Department of Insurance vs. Bankers Life and Casualty Company, Cause No. C-1889.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

Bruce R. Ramge
BRUCE R. RAMGE
Director of Insurance

6-16-2011
Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the executed Consent Order was sent to the Respondent, 600 West Chicago Avenue, Chicago, IL, 60654-2800, by certified mail, return receipt requested, on this 16th day of June, 2011.

Tracy A. Leuk